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The Legal Uses of Photography.

Examples are constantly occurring of the uses in legal investigations of the art of photographing. We noted in a previous number (*ante*, p. 121), that Judge BLATCHFORD has decided that photographs of papers will not be admitted in evidence where the genuineness of the handwriting is in dispute, and where the originals can be procured. The London Times, in its graphic account of the close of the Tichborne trial, thus alludes to this subject:

"It is impossible to avoid noticing, at the conclusion of the case, the important service rendered to the cause of justice by the art of photography. The principal documents in the case, the pocket-book of the defendant, his letters and those of Roger Tichborne, were photographed by the Stereoscopic Company, under the auspices of Mr. Nottage, their manager, and the *fac similes* thus produced were of immense use in facilitating the comparison of handwriting, to which the Lord Chief Justice attached much importance as one of the great tests of identity. There probably never was a case in which the application of the invention was of greater service."

We may add our conviction that the use of photography in legal investigations is destined, at no distant day, to form an important chapter in the law of evidence.

The London Times on Lord Westbury's Will—Some Advice to People who insist upon being their own Lawyers.

The London Times, after alluding to a conjectural interpretation which Sir GEORGE JESSEL, Master of the Rolls, has been obliged to put upon the will of the late Lord Chancellor WESTBURY, in pursuance of one of Lord WESTBURY'S own decisions, makes the following observations:

"The more prosaic question remains, what lesson we may best learn from Lord WESTBURY'S ill-success in carrying into effect his testamentary wishes. The first and most obvious feeling is, that English law presents a series of pitfalls which the most careful and most experienced travellers are not always able to avoid. If Lord WESTBURY stumbled, who, we ask, can expect to walk safely? But this reflection would really be unjust to English law so far as this particular case is concerned. Nor would it, again, be fair to draw from this suit a moral on the danger of neglecting the use and repetition of the proper cabalistic phrases, as though the courts incline to punish curtness and plainness as offences against the genius of an essentially mysterious profession, whose aim it is to deter the steps of all unqualified intruders. The true lesson of the case, in fact, is that it is not very prudent for any one to be entirely his own legal adviser, any more than it is prudent for him to be his own stockbroker or physician. Lord WESTBURY is far from being the first lawyer of eminence who has made himself, involuntarily, an occasion for the enforcement of this remark. It is not only the general public who cannot dispense with lawyers; lawyers themselves are scarcely less in need of one another's services. There are few men who can judge with any exactness of the nature of their own performances. The criticism even of an inferior mind will often be of the utmost value, and will often pronounce a truer, if only because a more unprejudiced, opinion. The case, as we have said, does not much differ, whether the sphere be that of law, or of medicine, or of finance. There is a great deal in all of them which a qualified man may do well and easily for himself, and there is a great deal, too, which it would be prudent for him to commit to others. Some will, perhaps, err by too great caution and self-distrust, just as others have erred in the contrary way from too great self-confidence; but there is no comparison whatever between the consequences of the two mistakes."

Enforcing Payment of Municipal Securities After Judgment.

We surrender considerable space in this number to the case of Rees v. The City of Watertown, recently decided by the Supreme Court of the United States, concerning the mode of enforcing judgments against municipal corporations. Viewed in the light of the practical consequences, which it requires no uncommon sagacity to see will flow from it, no case since Knox County v. Aspinwall, upon the subject of municipal securities, is of more moment than this one. Undoubtedly this is so, if what the learned Justice who delivered the opinion says upon the subject of the inherent inability of the court to appoint, if necessary, its own officers to discharge the duty which the municipal officers evade or refuse to perform, is to be regarded as the opinion of the court.

The bill was in equity, and for the reasons stated sought equitable relief, substantially upon the double ground that the property of the inhabitants was liable to judicial seizure for the corporate debts, and that the municipal authorities held their powers, in respect to the taxation of property, as *trustees* for the creditors of the corporation, and that the refusal of the trustees to do their duty in this regard constituted a ground of equity jurisdiction in favor of the judgment creditor, whose legal process had been three times thwarted and rendered unavailing. The court denies the proposition that for corporate debts the inhabitants are liable to be proceeded against personally, or their property seized by the court, and also holds that the proper *legal* remedy to enforce payment of a judgment against a municipality is the writ of mandamus, and that it is no sufficient ground for *equity* jurisdiction that by the devices and contrivances of the corporation debtor or its officers or inhabitants the writ has been rendered fruitless. Clearly, the case is decisive against the right of the creditor to enforce payment through the instrumentality of a court of chancery.

How far what is said as to the want of inherent power in the court in mandamus proceedings in any event to appoint its own officers to perform a duty specifically enjoined by statute as to levying and collecting taxes, which duty the corporate officers refuse to perform, is to be considered as a point decided or only *obiter*, will, in view of the vital importance of the question and the nature of the case before the court, be likely to give rise to controversy. At all events, the views here expressed are ominous, and the case marks a new epoch in the judicial history of the municipal bond question. Hereto-

fore the bondholders have had an almost uninterrupted succession of victories in the federal tribunals. In this judgment they have met with the first reverse; and if the views therein expressed are the views of the court in other than a case in equity, the reverse is a serious one in cases where the corporations and their people are so bent upon not paying that they will not keep up a regular corporate organization.

Liability of Banks and Bank Officers for Misrepresentations Concerning Solvency of Customer.

An interesting question concerning the liability of a bank or its manager for damages sustained by an individual through the false representations of the manager with regard to the solvency of a customer, has recently (February 2) been determined in the Exchequer Chamber, Westminster Hall, in the case of Swift v. Jewsbury, appealed from the Court of Queen's Bench. The plaintiff, Swift, having been applied to by Sir William Russell to supply him with a quantity of rails, applied to his own bank to ascertain, if possible, the condition of Sir William. The manager of this bank wrote to the manager of the bank at which Sir William had banked, desiring to know whether Sir William was responsible to the extent of £50,000. To this the manager of Sir Willlam's bank sent the following reply:

"GLOUCESTERSHIRE BANKING COMPANY, }
CHELTENHAM, 9th November, 1869. }

"GENTLEMEN: I am in receipt of your favor of the 8th inst., and beg to say in reply that Sir William Russell, Bart., M. P. for Norwich, is the lord of the manor of Charlton Kings, near this town, with a rent roll, I am told, of over £7,000 per annum, the receipt of which is in his own hands, and has large expectancies; and I do not believe he would incur the liabilities you name unless he was certain to meet the engagement. I am, gentlemen, yours faithfully,

T. B. GODDARD, Manager."

This letter was directed to the plaintiff's bank, namely: "The Sheffield and Hallamshire Bank, Sheffield." This information having been conveyed to the plaintiff by his bank, he took in payment of his rails Sir William's acceptance, which was afterwards dishonored. He now brought this action against the Gloucestershire Banking Company, and against Mr. Goddard individually. The court hold—Chief Justice COLERIDGE delivering the opinion—that the bank is not liable for the misrepresentation, reversing on this point the Queen's Bench. But with regard to the individual liability of Mr. Goddard, they rule otherwise. The Chief Justice on this point says: "With regard to Mr. Goddard, he has signed this, is found by the jury to have signed it with a knowledge that it is untrue, and with the distinct intention to mislead those, whoever they were, to whose knowledge that misrepresentation should come. Mr. Swift is a person to whose knowledge it has come, and upon him it has acted unfavorably to the extent of the loss of his money. Therefore, it appears to me clearly, as far as Mr. Goddard is concerned, the action can be maintained for the whole sum that Mr. Swift has lost, against Mr. Goddard."

This case involves a construction of the English statute of frauds, 9 Geo. 4, chap. 14, under which it is held that the writing "signed by the party to be charged therewith" was not signed by the bank so as to charge it. It is further ruled that the 19th and 20th Vict., ch. 97, § 13, does not operate to charge the bank. This statute provides that "an acknowledgment or promise made or contained by, or in writing signed by an *agent* of the party chargeable thereby, and duly authorized to make such acknowledgment or promise, shall have the same effect as if the writing had been signed by such party himself." The force of the case would then seem to be that representations of this character are not made by bank officers in their fiduciary character, but simply as individuals, and for the truth of which they are alone individually responsible.

The full opinion of Chief Justice COLERIDGE will be found in the Bankers' Magazine for March.

Louisiana Funding Bill—Suit to Enjoin its Enforcement—Decision by Judge Woods.

The act passed by the last legislature of Louisiana, providing for the funding of the debt of that state, is meeting with a determined opposition by the holders of Louisiana bonds in England and in this country. Among financial men this measure is regarded as an attempt at a partial repudiation of the obligations of the state. On the other hand, the results of the war and subsequent misgovernment have fastened upon that unhappy people a debt of such magnitude, much of it tainted with fraud and corruption, that the payment even of the interest of the debt in its present status seems a hopeless and foregone question.

We may perhaps find space to mention the character of this Louisiana funding scheme more fully hereafter. We allude to it now merely for the purpose of stating that at New Orleans the suits brought in the United States Circuit Court, before Hon. W. B. WOODS, by J. L. Macauley, of New York, and Stern Bros., of England, holders of Louisiana bonds, against auditor Clinton and other state officers, to enjoin the enforcement of the funding bill, were decided on the 21st instant. Judge WOODS, in an elaborate written opinion, held that this is in effect a suit against the state, and that the court has no jurisdiction, because such suits are prohibited by the 11th amendment to the federal constitution. This was the chief and decisive question of the case; but the learned judge also proceeded to point out that if any remedy existed at all, it would not be by injunction, but by mandamus. We have not seen the full opinion; but we publish in another place the substance of it, as given in one of the New Orleans papers.

In an article in a previous number on the North Carolina special tax bonds, we pointed out what seemed to us the difficulty in the way of success in the suits brought by the bondholders in that state, namely, that they involved a seeming attempt on the part of the creditors to coerce a sovereign state into the payment of its supposed obligations. It is a familiar principle that a sovereign state cannot be sued unless by its own consent, and then only in the particular forum and in the particular manner pointed out by that consent. Were this not so, states might be so embarrassed by the suits of private individuals and by the seizing of the public property under executions, that civil government would become impossible. Within the meaning of this principle the states of the American Union are sovereign. (Briscoe v. Bank, 11 Peters, 257, 321; Houston Tap and B. Railway Co. v. Randolph, 24 Tex. 317, 339; Auditorial Board v. Arles, 15 Tex. 75

Beers v. Arkansas, 20 How. 527; Auditor v. Davies, 2 Ark. 494, 504.)

It is true that it was held under the original constitution, by the Supreme Court of the United States, that the jurisdiction of the federal courts extended to the entertaining of a suit by a citizen of one of the states against another state of the Union. Chisholm v. Georgia, 2 Dall. 419. But the 11th amendment of the federal constitution afterwards intervened, and put an end to this jurisdiction, if it ever in fact existed; so that no suit can now be entertained in the federal courts against one of the states of the Union in which a private person is plaintiff.

Now, what is a *suit against a state?* It is manifest that any proceeding, whether brought against the state itself or its executive officers, which seeks to compel the performance of a supposed duty on the part of such state—to coerce it into the payment of its supposed obligations—to restrain it from violating its contracts—is as much a suit against the state as one in which the state is sued by name, and which seeks to reach and diminish a fund in the state's treasury, or to subject the state's property to execution. This conclusion would seem to be fully supported by the opinion of Judge WOODS. The bondholders have appealed from his decision to the Supreme Court of the United States. We shall watch the case with interest, but without much doubt as to what the result will be.

Bankrupt Act—Illegal Payment—Right of Holder of an Endorsed Note to Receive Payment from an Insolvent Debtor.

The case of Bartholow *et al.* v. Bean, published in this number, recently decided by the Supreme Court of the United States, lays down a principle of law, under the bankrupt act, of great practical importance to bankers, business men, and the holders of endorsed paper. Bean, as assignee in bankruptcy of Kintzing & Co., sued Bartholow, Lewis & Co., bankers in St. Louis, to recover back money which it was alleged they had received by way of an illegal preference from the bankrupts. The material facts were that the defendants held the note of Kintzing & Co., endorsed by one Wilcox, who was solvent and whose liability had become fixed by his waiver of protest and notice. Kintzing & Co. were insolvent and known to be so by Bartholow & Co. Under these circumstances, Kintzing & Co., without the procurement of the endorser, and without being required to do so by the defendants, paid to them the amount of the note; and the question was whether they were liable to refund the money to the assignee, the makers having, within four months, been thrown into bankruptcy. The supreme court, affirming the judgment of the circuit court, held that the assignee was entitled to recover, placing its judgment upon the ground that the bankrupt act (sec. 15), in the language of Mr. Justice MILLER, "intended, in the pursuit of its policy of equal distribution, to exclude both the holder of the note and the surety or endorser from the right to receive payment from the insolvent bankrupt. * * It was equally the duty of the holder of the note and the endorser to refuse to receive such a payment." The court say that if the holder had refused to receive payment, the endorser could not have set this up as a defence in an action against him by the holder.

The severe effect of the holder receiving payment from the insolvent maker is declared, *arguendo*, to be that "he makes himself liable to a judgment for the amount in favor of the bankrupt's assignee, and loses the right to recover *either of the endorser, or of the bankrupt's estate.*"

How far this had reference to the facts of the particular case, or is meant as a general proposition, does not appear from the opinion itself. But as stated, it relieves the solvent endorser, who was the party really benefited by the payment, since if it had not been made he would be liable; and the defendants had no motive to defeat or evade the bankrupt law, because the endorser's liability to them was fixed, and their right to insist upon and receive payment from him was undisputed.

Other aspects of the subject have arisen in the lower courts. Thus in Bean v. Laflin, East. Dist. of Mo., 5 Bankr. Reg. 333, TREAT, J., decided that an endorser who receives none of the proceeds of the note and whose liability has not become absolute, and who is guiltless of any fraud, cannot be compelled to pay to the bankrupt's assignee the amount of the note paid to the holder by the bankrupt while he was still carrying on business. But where the holder, who was innocent, was paid out of the means of the insolvent maker by the agency of the endorser, who knew the maker's insolvent condition, it was held that the *endorser* was liable to pay the amount to the assignee in bankruptcy, he and not the maker being, under these circumstances, the "party benefited" by the payment. LEAVITT, J., in Ahl v. Thorner, 3 Bankr. Reg. 29. Some general expressions in the opinions in both of the cases last cited require modification, perhaps, in view of the decision of the supreme court in the above-mentioned case of Bartholow, Lewis & Co.

Enforcement of Judgments upon Municipal Bonds —No Relief in Equity.

JAMES H. REES v. THE CITY OF WATERTOWN.

Supreme Court of the United States, No. 219, *October Term*, 1873.

1. **Municipal Bonds—Bill in Equity to Enforce Payment after Judgment.**—The plaintiff had obtained judgments upon municipal railway-aid bonds in the proper federal court in Wisconsin against a municipal corporation therein, and three successive writs of mandamus had been rendered ineffectual by reason of the want of a quorum of the council, caused by resignations and by the refusal of the municipal officers to obey the writs: thereupon the judgment creditor brought a *bill in equity*, asking a decree subjecting the taxable property of the citizens to the payment of his judgments, and that the marshal of the district be authorized to seize and sell so much of it as might be necessary for that purpose. *Held*, that the court had no power to grant the relief prayed.

2. ——. ——. **Appointment of Marshal to Levy Tax.**—In the absence of a statute authorizing it, the court has no power on a bill in equity to appoint its marshal a commissioner with authority to levy a tax upon the taxable property of the municipality, and on this point the case was distinguished from The Supervisors v. Rogers, 7 Wall. 175, which arose in Iowa, where there was such a statute.

3. **Municipal Debts—Personal Liability of Inhabitants.**—There is no personal liability on the part of the citizens or inhabitants of an ordinary municipal corporation outside of the New England states for corporate debts.

4. ——. **Enforcing Payment after Judgment—The Remedy.**—Mandamus is the appropriate *legal* remedy for the enforcement of judgments against a municipal corporation, and the fact that this remedy has proved fruitless by reason of the devices of the corporation debtor or its citizens does not constitute ground of *equity jurisdiction* to enforce payment of the judgment.

Appeal from the Circuit Court of the United States for the Western District of Wisconsin.

Mr. Justice HUNT delivered the opinion of the court.

The plaintiff was the owner of certain bonds issued by the city of Watertown to the Watertown and Madison Railroad Company, and by them sold for their benefit. The plaintiff recovered three several judgments in the United States Court on these bonds, amounting to nearly ten thousand dollars. Afterwards he

brought another suit in the United States Court for the Western District of Wisconsin, upon these several judgments, and on the 3d of February, 1871, recovered a judgment for $11,066.89.

In the summer of 1868 he issued executions upon the two judgments first obtained, which were returned wholly unsatisfied.

In November of the same year he procured from the United States Circuit Court a peremptory writ of mandamus, directing the city of Watertown to levy and collect a tax upon the taxable property of the city, to pay the said judgments; but, as the plaintiff alleges, before the writ could be served, a majority of the members of the city council resigned their offices. This fact was returned by the marshal, and proceedings upon the mandamus thereupon ceased.

In May, 1869, another board of aldermen having been elected, the plaintiff procured another writ of mandamus to be issued, which writ was served on all of the aldermen except one Holger, who was sick at the time of the service upon the others. No steps were taken to comply with the requisition of the writ. An order to show cause why the aldermen should not be punished for contempt, in not complying with its requirements, was obtained, and before its return day six of the aldermen resigned their offices, leaving in office but one more than a quorum, of whom the said Holger, upon whom the writ had not been served, was one. Various proceedings were had and various excuses made, the whole resulting in an order that the aldermen should at once levy and collect the tax; but before the order could be served on Holger, he resigned his office, and again the board was left without a quorum. Nothing was accomplished by their efforts in aid of the plaintiff, but fines were imposed upon the recusant aldermen, which were ordered to be applied in discharge of the costs of the proceedings.

In October, 1870, the plaintiff obtained a third writ of mandamus, which resulted as the former ones had done, and by the same means on the part of the officers of the city. A special election was ordered to be held to fill the vacancies of the aldermen so resigning, but no votes were cast, except three in one ward, and the person for whom they were cast refused to qualify. There is a very limited denial in the answer of some of these allegations, but their general truth is not denied. It is certain that no part of the debt of the plaintiff has ever been paid, and that with an accumulation of fourteen years' interest, the same remains wholly due, and that the plaintiff's efforts to obtain satisfaction of his judgments have failed.

The bill sets forth certain acts of the legislature of Wisconsin, which, it is alleged, were intended to aid the defendant in evading the payment of its debts, and which, it can scarcely be denied, have had that effect, whatever might have been the intent of the legislature passing them.

The plaintiff asks the aid of the court to subject the taxable property of the city to the payment of his judgments, alleging that the corporate authorities are trustees for the benefit of the creditors of the city, and the property of the citizens a trust fund for that purpose, and that it is the duty of the court to lay hold of the property and cause it to be justly applied. He asks specifically that a decree may be made subjecting the taxable property of the citizens to the payment of his judgments, and that the marshal of the district may be empowered to seize and sell so much of it as may be necessary, and to pay over to him the proceeds of such sale.

This case is free from the objections usually made to a recovery upon municipal bonds. It is beyond doubt that the bonds were issued by the authority of an act of the legislature of the state of Wisconsin, and in the manner prescribed by the statute. It is not denied that the railroad, in aid of the construction of which they were issued, has been built, and was put in operation.

Upon a class of the defences interposed in the answer and in the argument it is not necessary to spend much time. Thus it is alleged that the city of Watertown contains a population of but 7,553 inhabitants; that the value of its property is assessed at but little over a million of dollars; that the debt of the city is $750,000; that it is impossible for the city to pay this debt; that it was expected and provided that the railroad company would pay the bonds in question, but the roads have been foreclosed and sold; that the city has compromised and settled a portion of its indebtedness; that it has levied the taxes necessary to effect such compromise; and that it is ready to compromise all outstanding bonds and judgments at as high a rate as can be collected of the people of Watertown; that there is no law to compel the retention of the office by aldermen to levy taxes; that the plaintiff took his chance of its being voluntarily done, and that, not being voluntarily done, there is no violation of law.

These theories are vicious. They are based upon the idea that a refusal to pay an honest debt is justifiable because it would distress the debtor to pay it. A voluntary refusal to pay an honest debt is a high offence in a commercial community, and is just cause of war between nations. So far as the defence rests upon these principles we find no difficulty in overruling it.

There is, however, a grave question of the power of the court to grant the relief asked for.

We are of the opinion that this court has not the power to direct a tax to be levied for the payment of these judgments. This power to impose burdens and raise money is the highest attribute of sovereignty, and is exercised, first, to raise money for public purposes only; and, second, by the power of legislative authority only. It is a power that has not been extended to the judiciary. Especially is it beyond the power of the federal judiciary to assume the place of a state in the exercise of this authority, at once so delicate and so important. The question is not entirely new in this court.

In the case of Supervisors v. Rogers (7 Wall. 175), an order was made by this court appointing the marshal a commissioner, with power to levy a tax upon the taxable property of the county, to pay the principal and interest of certain bonds issued by the county, the payment of which had been refused. That case was like the present, except that it occurred in the state of Iowa, and the proceeding was taken by the express authority of a statute of that state. The court say: "The next question is as to the appointment of the marshal as a commissioner to levy the tax in satisfaction of the judgment. This depends upon a provision of the code of the state of Iowa. This proceeding is found in a chapter regulating proceedings in the writ of mandamus, and the power is given to the court to appoint a person to discharge the duty enjoined by the peremptory writ which the defendant had refused to perform, and for which refusal he was liable to an attachment, and is express and unqualified. The duty of levying the tax upon the taxable property of the county to pay the principal and interest of these bonds was specially enjoined upon the board of supervisors by the act of the legislature that authorized their issue, and the appointment of the marshal as a commissioner, in pursuance of the above section, is to provide for the performance of this duty where the board has disobeyed or evaded the law of the state and the peremptory mandate of the court.

The state of Wisconsin, of which the city of Watertown is a municipal corporation, has passed no such act. The case of Supervisors v. Rogers, is, therefore, of no authority in the case before us. The appropriate remedy of the plaintiff was and is a writ of mandamus. (See Riggs v. Johnson County, 6 Wall. 193.) This may be repeated as often as the occasion requires. It is a judicial writ, a part of a recognized course of legal proceedings. In the present case it has been thus far unavailing, and the prospect of its future success is, perhaps, not flattering. However this may be, we are aware of no authority in this court to appoint its own officer to execute the duty thus neglected by the city in a case like the present.

In Welch v. St. Genevieve (10 Am. Law. 512), at a circuit court for the district of Missouri, a tax was ordered to be levied by the marshal under similar circumstances. We are not able to recognize the authority of the case. No counsel appeared for the city (Mr. Reynales as *amicus curiæ* only); no authorities are cited which sustain the position taken by the court; the power of the court to make the order is disposed of in a single paragraph, and the execution of the order suspended for three months to give the corporation an opportunity to select officers and itself to levy and collect the tax, with the reservation of a longer suspension if it should appear advisable. The judge, in delivering the opinion of the court, states that the case is without precedent, and cites in support of its decision no other cases than that of Riggs v. Johnson County, 6 Wall. 166, and Lansing v. Treasurer, 9 Am. Law Reg. N. S. 415. The case cited from 6 Wallace does not touch the present point. The question in that case was whether a mandamus having been issued by an United States court in the regular course of proceedings, its operation could be stayed by an injunction from the state court, and it was held that it could not be. It is probable that the case of Supervisors v. Rogers (7 Wall. 175), was the one intended to be cited. This case has already been considered.

The case of Lansing v. Treasurer (also cited), arose within the state of Iowa. It fell within the cass of Supervisors v. Rogers, and was rightly decided because authorized by the express statute of the state of Iowa. It offered no precedent for the decision of a case arising in a state where such a statute does not exist.

These are the only authorities upon the power of this court to direct the levy of a tax under the circumstances existing in this case to which our attention has been called.

The plaintiff insists that the court may accomplish the same result under a different name; that it has jurisdiction of the persons and of the property, and may subject the property of the citizens to the payment of the plaintiff's debt without the intervention of state taxing officers, and without regard to tax laws. His theory is that the court should make a decree subjecting the individual property of the citizens of Watertown to the payment of the plaintiff's judgment; direct the marshal to make a list thereof from the assessment rolls, or from such other sources of information as he may obtain; report the same to the court, where any objections should be heard; that the amount of the debt should be apportioned upon the several pieces of property owned by individual citizens; that the marshal should be directed to collect such apportioned amount from such persons, or in default thereof to sell the property.

As a part of this theory the plaintiff argues that the court has authority to direct the amount of the judgment to be wholly made from the property belonging to any inhabitant of the city, leaving the citizens to settle the equities between themselves.

This theory has many difficulties to encounter. In seeking to obtain for the plaintiff his just rights, we must be careful not to invade the rights of others. If an inhabitant of the city of Watertown should own a block of buildings of the value of $20,000, upon no principle of law could the whole of the plaintiff's debt be collected from that property. Upon the assumption that individual property is liable for the payment of the corporate debts of the municipality, it is only so liable for its proportionate amount. The inhabitants are not joint and several debtors with the corporation, nor does their property stand in that relation to the corporation or to the creditor. This is not the theory of the law even in regard to taxation. The block of buildings we have supposed is liable to taxation only upon its value in proportion to the value of the entire property, to be ascertained by assessment, and when the proportion is ascertained or paid it is no longer or further liable. It is discharged. The residue of the tax is to be obtained from other sources. There may be repeated taxes and assessments to make up delinquencies, but the principle and general rule of law are as we have stated.

In relation to the corporation before us, this objection to the liability of individual property for the payment of a corporate debt is presented in a specific form. It is of a statutory character.

The remedies for the collection of a debt are essential parts of the contract of indebtedness, and those in existence at the time it is incurred must be substantially preserved to the creditor. Thus a statute prohibiting the exercise of its taxing power by the city to raise money for the payment of these bonds would be void. (Van Hoffman v. City of Quincy, 4 Wall. 535.) But it is otherwise of statutes which are in existence at the time the debt is contracted. Of these the creditor must take notice, and if all the remedies are preserved to him which were in existence when his debt was contracted, he has no cause of complaint. (Cooley Const. Lim. 285 287.)

By section 9 of the defendant's charter (Priv. Laws, ch. 237, p. 667) it is enacted as follows: "Nor shall any real or personal property of any inhabitant of said city, or any individual or corporation, be levied upon or sold by virtue of any execution issued to satisfy or collect any debt, obligation or contract of said city."

If the power of taxation is conceded not to be applicable, and the power of the court is invoked to collect the money as upon an execution to satisfy a contract or obligation of the city, this section is directly applicable and forbids the proceeding. The process or order asked for is in the nature of an execution; the property proposed to be sold is that of an inhabitant of the city; the purpose to which it is to be applied is the satisfaction of a debt of the city. The proposed remedy is in direct violation of a statute in existence when the debt was incurred and made known to the creditor with the same solemnity as the statute which gave power to contract the debt. All laws in existence when the contract is made are necessarily referred to in it, and form a part of the measure of the obligation of the one party and of the right acquired by the other. (Cooley Const. Lim. 285.)

But independently of this statute upon the general principles of law and of equity jurisprudence, we are of opinion that we cannot grant the relief asked for. The plaintiff invokes the aid of the principle that all legal remedies having failed, the court of chancery must give him a remedy; that there is a wrong which cannot be righted elsewhere, and hence the right must be sustained in chancery. The difficulty arises from too broad an application of a general principle. The great advantage possessed by the court of chancery is not so much in its enlarged jurisdiction as in the extent and adaptability of its remedial powers. Generally its jurisdiction is as well defined and limited as that of a court of law. It cannot exercise jurisdiction when there is an adequate and complete remedy at law. It cannot assume control over that large class of obligations called imperfect obligations, resting upon conscience and moral duty only, unconnected with legal obligations. Judge STORY says "there are cases of fraud, of accident and of trusts which neither courts of law or of equity presume to relieve or to mitigate," of which he cites many instances. (1 Story Eq. Jur., § 61.) Lord Talbot says "there are cases, indeed, in which a court of equity gives remedy where the law gives none, but where a particular remedy is given by law, and that remedy is bounded and circumscribed by particular rules, it would be very improper for this court to take it up where the law leaves it and extend it further than the law allows." (Heard v. Stanford, Cas. Temp. Talbot, 174, cited Story, *sup.*)

Generally its jurisdiction depends upon legal obligations, and its decrees can only enforce remedies to the extent and in the mode by law established. With the subjects of fraud, trust or accident when properly before it, it can deal more completely than can a court of law. These subjects, however, may arise in courts of law and there be well disposed of. (1 Story Eq. Jur. § 60.)

A court of equity cannot, by avowing that there is a right, but no remedy known to the law, create a remedy in violation of law

or even without the authority of law. It acts upon established principles not only, but through established channels. Thus assume that the plaintiff is entitled to the payment of his judgment, and that the defendant neglected its duty in refusing to raise the amount by taxation, it does not follow that this court may order the amount to be made from the private estate of one of its citizens. This summary proceeding would involve a violation of the rights of the latter. He has never been heard in court. He has had no opportunity to establish a defence to the debt itself, or, if the judgment is valid, to show that his property is not liable to its payment. It is well settled that legislative exemptions from taxation are valid, that such exemptions may be perpetual in their duration, and that they are in some cases beyond legislative interference. The proceeding supposed would violate that fundamental principle contained in chapter 29 of *Magna Charta*, and embodied in the constitution of the United States, that no man shall be deprived of his property without due process of law—that is, he must be served with notice of the proceeding and have a day in court to make his defence. (Westervelt v. Greig, 12 N. Y. 209.)

"Due process of law (it is said) undoubtedly means in the due course of legal proceedings, according to those rules and forms which have been established for the protection of private rights." (Ib.) In the New England states it is held that a judgment obtained against a town may be levied upon and made out of the property of any inhabitant of the town. The suit in those states is brought in form against the inhabitants of the town, naming it; the individual inhabitants, it is said, may and do appear and defend the suit, and hence it is held that the individual inhabitants have their day in court, are each bound by the judgment, and that it may be collected from the property of any one of them. (See the cases collected in Cooley Const. Lim. 240 to 245.) This is local law peculiar to New England. It is not the law of this country generally, or of England. (Russell v. Men of Devon, 2 T. R. 667.) It has never been held to be the law in New York, New Jersey, in Pennsylvania, nor, as stated by Mr. Cooley, in any of the Western states. (See Emeric v. Gilman, 10 Cal. R. 408, where all the cases are collected.) So far as it rests upon the rule that these municipalities have no common fund, and that no other mode exists by which demands against them can be enforced, he says that it cannot be considered as applicable to those states where provision is made for compulsory taxation to satisfy judgments against a town or city. (Cooley Const. Lim. 246.)

The general principle of law to which we have adverted is not disturbed by these references. It is applicable to the case before us. Whether, in fact, the individual has a defence to the debt, or by way of exemption, or is without defence, is not important. To assume that he has none, and therefore that he is entitled to no day in court, is to assume against him the very point he may wish to contest.

Again, in the case of Emeric v. Gilman, before cited, it is said: "The inhabitans of a county are constantly changing; those who contributed to the debt may be non-residents upon the recovery of the judgment or the levy of the execution. Those who opposed the creation of the liability may be subjected to its payment, while those by whose fault the burden has been imposed may be entirely relieved of responsibility. * * * To enforce this right against an inhabitant of a county would lead to such a multiplicity of suits as to render the right valueless:" We do not perceive, if the doctrine contended for is correct, why the money might not be entirely made from the property owned by the creditor himself, if he should happen to own property within the limits of the corporation of sufficient value for that purpose.

The difficulty and the embarrassment arising from an apportionment or contribution among those bound to make the payment, we do not regard as a serious objection. Contribution and apportionment are recognized heads of equity jurisdiction, and if it be assumed that process could issue directly against the citizens to collect the debt of the city, a court of equity could make the apportionment more conveniently than could a court of law. (1 Story Eq. Jur., § 470 and onwards.)

We apprehend, also, that there is some confusion in the plaintiff's proposition, upon which the present jurisdiction is claimed. It is conceded, and the authorities are too abundant to admit a question, that there is no chancery jurisdiction where there is an adequate remedy at law. The writ of mandamus is, no doubt, the regular remedy in a case like the present, and ordinarily it is adequate and its results are satisfactory. The plaintiff alleges, however, in the present case, that he has issued such a writ on three different occasions; that by means of the aid afforded by the legislature, and by the devices and contrivances set forth in the bill, the writs have been fruitless; that, in fact, they afford him no remedy. The remedy is in law and in theory adequate and perfect. The difficulty is in its execution only. The want of a remedy and the inability to obtain the fruits of a remedy are quite distinct, and yet they are confounded in the present proceeding. To illustrate: the writ of *habere facias possessionem* is the established remedy to obtain the fruits of a judgment for the plaintiff in ejectment. It is a full, adequate, and complete remedy. Not many years since there existed in central New York combinations of settlers and tenants, disguised as Indians, and calling themselves such, who resisted the execution of this process in their counties, and so effectually that for some years no landlord could gain possession of his land. There was a perfect remedy at law, but through fraud, violence or crime, its execution was prevented. It will hardly be argued that this state of things gave authority to invoke the extraordinary aid of a court of chancery. The enforcement of the legal remedies was temporarily suspended by means of illegal violence, but the remedies remained as before. It was the case of a miniature revolution. The courts of law lost no power, the court of chancery gained none. The present case stands upon the same principle. The legal remedy is adequate and complete, and time and the law must perfect its execution.

Entertaining the opinion that the plaintiff has been unreasonably obstructed in the pursuit of his legal remedies, we should be quite willing to give him the aid requested if the law permitted it. We cannot, however, find authority for so doing, and we acquiesce in the conclusion of the court below that the bill must be dismissed.

DECREE AFFIRMED.

Mr. Justice CLIFFORD.—I dissent from the opinion of the court in this case upon the ground that equity will never suffer a trust to be defeated by the refusal of the trustee to administer the fund, or on account of the misconduct of the trustee, and also because the effect of the decree in the court below, if affirmed by this court, will be to give judicial sanction to a fraudulent repudiation of an honest debt. For which reasons, as it seems to me, the decree of the subordinate court should be reversed.

Mr. Justice SWAYNE concurring.

The Louisiana Funding Bill—The Federal Courts have no Power to Coerce a State into the Payment of its Supposed Obligations.

MACAULEY *ET AL.* v. CLINTON, AUDITOR OF LOUISIANA.

STERN BROS. *ET AL.* v. THE SAME DEFENDANT.

Circuit Court of the United States, District of Louisiana, March 21, 1874.

Before Hon. W. B. WOODS, Circuit Judge.

1. Injunction Against State Officers.—An injunction will not lie against the officers of a state government to restrain them from hindering or delaying the estimate, levy and collection of taxes. Such an injunction is in its nature *mandatory*, and a man-

datory injunction for such a purpose will not lie. If there were any remedy at all, it would be by mandamus.

2. ———. For the same reason an injunction will not lie to restrain an officer of a state government from receiving delinquent taxes in auditor's warrants.

3. **Remedy against State to Compel Payment of its Debt—Jurisdiction of Federal Courts.**—No power exists in the federal courts to compel the officers of a state government to proceed with the execution of the laws of the state which prescribe means of raising revenue for the payment of the state's obligations. Any proceeding of this kind is, in effect, a suit against the state, and is prohibited by the 11th amendment to the federal constitution.

The following is the substance of the opinion:

WOODS, J.—[After stating the case.]

It is obvious to remark that there are insuperable objections to so much of the prayer for relief as asks that the defendants may be decreed to comply with and specifically perform the contracts of the state by estimating and collecting the interest and sinking fund taxes and applying it to the payment of the principal and interest on the bonds. The objection is, that if there is a remedy at all, it is a remedy at law, namely, by the issuance of the writ of mandamus. If this suit were brought against a municipal corporation and its officers to compel the collection of a tax to pay the interest on its bonds, the plain, adequate and complete remedy would be the legal writ of mandamus. It is true that before the writ could issue the bondholders must have received a judgment at law on their bonds. Bath County v. Amy, 13 Wallace, 247. It may be replied to this that the bondholders cannot lay the necessary foundation for the writ of mandamus in the United States courts, because they are prohibited from suing the state by the eleventh amendment to the constitution of the United States. But this fact may prove that there is no remedy for the complainants in the United States courts. It certainly does not follow that because there are obstacles to the adoption of the plain legal remedy that therefore the remedy is in equity. It might as well be claimed that because the bondholder could not go into a court of law and secure a judgment against the state upon his bonds, he might therefore go into equity and seek a decree against the officers of the state for the amount due on his bonds. Where the eleventh amendment to the constitution declares that "the judicial power of the United States shall not be construed to extend to any suit at law or in equity commenced or prosecuted against one of the United States by citizens of another state, or subjects of any foreign state," the purpose is clear to exempt states from suits upon their contracts, either at law or in equity, and the fact that this amendment interposes an obstacle to a suit at law against a state does not give a court of equity jurisdiction to enforce the same contract on the pretext that there is no remedy at law. Suits in both forms against a state are prohibited. It is evident, therefore, that should this bill come on for final hearing the decree prayed for could not be granted.

We may, however, consider the bill as one for injunction only, and the question now presented is, can or ought the court to allow the injunction to go as prayed for? It is claimed by the bill, and conceded by the counsel for defendants, that the bonds of the state of Louisiana held by the complainants are contracts; that the laws under which the bonds were issued, and which provide for the levy and collection of taxes to pay the interest and reduce the principal, and declaring that the same should be annually continued until the principal and interest of said bonds were fully paid—that these provisions of law entered into and formed a part of the contract between the state and the bondholder, just as completely as if the laws themselves were entered in the body of the bonds. The state has, therefore, contracted that at a certain date named in the bonds she would pay the principal; that in the meantime she will pay the interest semi-annually to the holders of the bonds; and as an assurance that this part of her contract will be performed, she promises further that she will levy and collect an annual tax to make these payments, and that the revenue raised by this tax shall be set apart for the purpose of paying said interest and principal. It is conceded that the state has made this contract with the complainant in this case.

Now to what ends is the injunction sought for in this case? They are two-fold. First, to compel the officers of the state to execute the contracts of the state by estimating, levying, collecting and applying to the payment of the bonds the tax originally provided by law for the payment of the interest and the redemption of the principal. It is true the prayer for injunction is that the officers of the state may be restrained from hindering or delaying the estimate, levy and collection of the tax, etc. But as the defendants are the officers whose duty it is to estimate, levy and collect, it is clear that such an injunction from this court would be mandatory, and compel the performance of affirmative acts. Second, to restrain the state officers from receiving delinquent taxes in auditor's warrants instead of lawful money of the United States. The first question presented by the prayer for injunction is: Can the officers of the state be compelled by injunction to do an affirmative act? The complainant claims that the funding bill and the act of March 14th, 1874, which in effect prohibits the collection of taxes for the payment of the principal and interest of the outstanding bonds of the state, are unconstitutional and therefore void. If this be conceded, then the case is in the same plight as if these acts just named had never been passed, and as if the officers of the state, without pretence of warrant of law, were refusing to levy and collect the taxes which the state had agreed should be levied and collected and applied to the payment of these bonds. Has this court the power, by injunction, to do an affirmative act? The authorities are adverse. The case of Walkley v. City of Muscatine, 6th Wallace, 483, was a bill in equity to compel the authorities of the city of Muscatine to levy a tax upon the property of the inhabitants for the purpose of paying the interest on certain bonds issued by the city. It appeared that a judgment had been rendered in the same court against the city for $7,666, interest due on bonds held by plaintiff; that execution had been issued and returned unsatisfied, no property being found liable to execution; that the mayor and aldermen had been requested to levy a tax to pay the judgment, but had refused; that the city authorities possessed the power, under their charter, to levy a tax of one per cent. on the valuation of the city property, and had made a levy annually, but had appropriated the proceeds to other purposes, and had wholly neglected to pay the interest upon the bonds. The bill prayed that the mayor and aldermen might be decreed to levy the tax and appropriate so much of the proceeds as might be sufficient to pay the judgment, interest and costs. Upon this case the supreme court say: "We are of the opinion that complainant has mistaken the appropriate remedy in the case, which was by writ of mandamus from the circuit court. We have been furnished with no authority for the substitution of a bill in equity and injunction for the writ of mandamus. An injunction is generally a preventive writ, not an affirmative remedy. It is sometimes used in the latter character, but this is in cases where it is used by the courts to carry into effect its own decrees, as in putting the purchaser under a decree of foreclosure of the mortgage into posession of the premises. Even the exercise of this power was doubted till the case of Kershaw v. Thompson, 4th Johnson, 609, in which the learned chancellor, after an examination of the cases in England on the subject, came to the conclusion he possessed it—not, however, by the writ of injunction, but by the writ of assistance."

A consideration of the second branch of the injunction asked, namely, to restrain the state officers from receiving delinquent taxes in auditor's warrants, will show that this is an indirect way of praying for an injunction to compel the state officers to receive the delinquent taxes in lawful money of the United States, according to the contract of the state as claimed by complainants. The complainant would not be satisfied should the state officers suspend the receipt of state warrants. The evident purpose of this

part of the injunction is to compel them to receive lawful money; for, unless the officers, after declining to receive auditor's warrants, proceed to collect the taxes in lawful money, the complainant would take no advantage from his motion. But the fatal objection to the motion of complainant is found in the character of his bill: it is either a suit in effect against the state of Louisiana, or if not, the parties defendant are merely nominal parties having no interest in the controversy. In either case no decree can be made.

In the case of Kentucky v. Denison, Governor, 24th Howard, 109, it was held that neither the congress nor the courts of the United States could coerce a state officer, as such, to perform any duty imposed upon him by act of congress. Does it not follow *a fortiori* that a court of the United States cannot compel the governor of a state to execute a law passed by the state?

In the view I have herein taken of the case, I have conceded what the complainants claim, that the funding bill and the act of March 14, 1874, are both unconstitutional and void, and have regarded the case just as if those acts had never been passed, to-wit: a bill to compel the defendants, officers of the state, to execute its laws. This may be done in the case of officers of municipal corporations, but the sovereign power of a state cannot be so coerced. To do so would be to substitute this court for the executive officers of the state, to supplant their views of duty and the obligations Imposed upon them by their official oaths, by the discretion of this court and its official oath. In other words, it would be an undertaking upon the part of this court to administer the state government. This the court has no power and no inclination to do. In my judgment this is, to all intents and purposes, a suit against the state. The officers of the state, including the chief executive, are sued in their official capacity to compel them to execute the laws of the state. It is a suit to enforce the contract of the state to pay money; the officers are not sued as individuals who happen to be in public offices, to prevent them from doing some act to the prejudice of complainant not warranted by law, as was the case of Osborne v. The Bank and Davis v. Grey. If a suit like this can be maintained, then the 11th amendment to the constitution of the United States is waste paper..

Bankrupt Act—Fraudulent Preference by Insolvent.

THOMAS J. BARTHOLOW, JAMES W. LEWIS, BENJAMIN W. LEWIS, JR., AND JOHN D. PERRY, PLAINTIFFS IN ERROR, v. WILLIAM C. BEAN, ASSIGNEE OF CHARLES S. KINTZING, BANKRUPT.

Supreme Court of the United States, No. 171, *October Term*, 1873.

1. **Bankrupt Act—Fraudulent Preference.**—A payment by an insolvent which would otherwise be void as a preference under sections thirty-five and thirty-nine of the bankrupt law, is not excepted out of that provision because it was made to a holder of his note over-due, on which there was a solvent endorser whose liability was already fixed by protest and notice.

In error to the Circuit Court of the United States for the Districts of Missouri.

Mr. Justice MILLER delivered the opinion of the court.

The plaintiffs in error were bankers in the city of St. Louis, with whom Kintzing & Co. kept a bank account, and they had discounted the note of Kintzing & Co. for $2,500, dated January 15th, 1869, payable in sixty days, endorsed by J. B. Wilcox. Before its maturity Wilcox, who was solvent, waived protest and notice, and the note remained unpaid until August 9th, when Kintzing paid the amount to plaintiffs in error.

In the meantime Kintzing & Co. failed in business, and in February attempted a composition with their creditors at seventy cents on the dollar, in notes payable in six, twelve, and eighteen months. Plaintiffs in error did not sign this agreement, though they knew of it, and that effort seems to have failed. It must be conceded that Kintzing was utterly insolvent when he paid the note, and this must have been known to plaintiffs in error.

A petition in bankruptcy was filed against Kintzing within less than four months after the payment of the note, and Bean, the defendant in error, having been appointed assignee, brought the present suit to recover the money so paid, as being a preference of a creditor forbidden by the bankrupt law.

If it were a transaction solely between Kintzing and the bankers there seems to be no reason to doubt that the payment was such a preference as would enable the assignee to recover it back. But the case is not a little embarrassed by the fact that the endorser, Wilcox, was solvent, and was liable on the note to the bankers; and the question arises whether, under such circumstances, they were at liberty to refuse to receive payment of the principal without losing their claim upon the endorser, who was probably a mere accommodation surety. It is a question not without difficulty.

It is very true that an ingenious argument is made to show that by an arrangement between Kintzing and his partner the former assumed all the debts under the attempted compromise, and took all the property of the former, and that, by reason of the partial success of the compromise, Kintzing was no longer insolvent. But the facts in the finding of the court leave no room to doubt that Kintzing was, after the failure, always insolvent, in the sense of being unable to pay his current over-due debts, and of this plaintiffs could not be unaware, since they held the note, on which they received the money now sued for, about five months after its maturity, without payment, and without their signing the compromise paper. They must, therefore, have known that, in the sense of the bankrupt law, Kintzing had been insolvent for months before they received payment.

Does the fact that Wilcox, the endorser, was solvent, and was liable, change the rule as to payment as a preference?

The statute in express terms forbids such preference, not only to any ordinary creditor of the bankrupt, but to any person who is under any liability for him; and it not only forbids payment, but it forbids any transfer or pledge of property as security to indemnify such persons. It is therefore very evident that the statute did not intend to place an endorser or other surety in any better position in this regard than the principal creditor, and that if the payment in the case before us had been made to the endorser, it would have been recoverable by the assignee. If the endorser had paid the note, as he was legally bound to do, when it fell due, or at any time afterwards, and then received the amount of the bankrupt, it would certainly have been recovered of him. Or if the money had been paid to him directly instead of the holder of the note, it could have been recovered; or if this money or other property had been placed in his hand to meet the note or to secure him instead of paying it to the bankers, he would have been liable. He would not, therefore, have been placed in any worse position than he already occupied if the holders of the note had refused to receive the money of the bankrupt. It is very obvious that the statute intended, in pursuit of its policy of equal distribution, to exclude both the holder of the note and the surety or endorser from the right to receive payment from the insolvent bankrupt. It is forbidden. It is called a fraud upon the statute in one place and an evasion of it in another. It was made by the statute equally the duty of the holder of the note and of the endorser to refuse to receive such a payment.

Under these circumstances, whatever might have been the right of the endorser, in the absence of the bankrupt law, to set up a tender by the debtor and a refusal of the note-holder to receive payment, as a defence to a suit against him as endorser, no court of law or equity could sustain such a defence, while that law furnishes the paramount rule of conduct for all the parties to the transaction; and when in obeying the mandates of that law the endorser is

placed in no worse position than he was before, while by receiving the money the holder of the note makes himself liable to a judgment for the amount in favor of the bankrupt's assignee, and loses his right to recover either of the endorser or of the bankrupt's estate.

We are of opinion, therefore, notwithstanding the hardship of the case, which is more apparent than real, that the payment must be held to be a preference within the bankrupt law, and that the judgment of the court below, that the assignee should recover it, must be affirmed.

JUDGMENT AFFIRMED.

The Indiana Liquor Law.

What is called the "Baxter Law" of Indiana is said to provide that the commissioners of any county shall not allow a man to sell liquor unless he first obtains the signatures to his petition of a majority of the voters of the county. Suits for damages may be brought against a liquor seller who has sold liquor to an habitual drunkard, by a variety of persons, friends or relatives, of the drunkard, or even, in some cases, by the township trustee. None of the permissions granted to saloon keepers permit liquor selling on Sundays or holidays. In many of the large towns the law is a failure. In such places no dealer finds it difficult to procure the requisite number of signers to his petition; but the country press generally supports the law, and in the country towns the majority of the voters refuse to lend their names to those who are petitioning for permission to sell. It is said that the law has thus far stood the test of judicial examination except that the supreme court has declared unconstitutional the 9th section, which declares it to be unlawful to become intoxicated, and which provides that all intoxicated persons may be arrested and forced to disclose the name of the dealer who sold the liquor.

The Fourteenth Amendment and the State Liquor Laws.

The liquor sellers of Iowa have been reduced to such straits by the recent temperance legislation of that state, that they not long since got up a test case and took it to the Supreme Court of the United States, to see if they could not get some relief under the fourteenth amendment of the federal constitution. The case was argued at the same time with the Louisiana slaughter-house cases (16 Wall. 36), but a decision was not rendered until March 4th. The opinion of the court was delivered by Mr. Justice MILLER. It will be found in full in the Washington Chronicle of March 17th. The court express, in substance, the view that the right to sell such liquors is not one of the privileges and immunities of citizens of the United States which by the fourteenth amendment the states are forbidden to abridge; but they say that if a case were presented in which a person owned liquor, and while so owning it a law was passed by the state absolutely prohibiting any sale, it would be a very grave question whether such a law would not be inconsistent with the provisions of that amendment which forbids the state to deprive any person of life, liberty or property without due process of law.

But the court further say, in substance, that while the court below attempt to present this question, the record fails to raise it; first, because the plea which is taken as true does not state in due form, by positive allegation, the *time* when the defendant became the owner of the liquor sold; and secondly, because the court are satisfied, from an examination of the record, that the case is but a moot case, made up to obtain the opinion of the court on a grave constitutional question without the existence of facts necessary to raise that question. In such a case, where the supreme court of the state from whence the cause comes has not considered the question, the Supreme Court of the United States will not feel at liberty to go out of its usual course to decide it.

Mr. Justice FIELD and Mr. Justice BRADLEY delivered concurring opinions, in which they took occasion to restate the grounds of their dissent from the opinion of a majority of the court in the slaughter-house cases, in order to correct some apparent misapprehension of their views as to the fourteenth amendment. We have not seen these separate opinions; but from a note in the Albany Law Journal, we learn that Mr. Justice FIELD says that the judges who dissented in those cases never contended that the fourteenth amendment interferes, in any respect, with the police power of the state, but that, on the contrary, "they recognized the power of the state in its fullest extent, observing that it embraced all regulations affecting the health, good order, morals, peace and safety of society; that all sorts of restrictions and burdens were imposed under it, and that, when these were not in conflict with any constitutional prohibition or fundamental principles, they could not be successfully assailed in a judicial tribunal. But they said that, under the pretence of prescribing a police regulation, the state could not be permitted to encroach upon any of the just rights of the citizen, which the constitution intended to guard against abridgment; and because, in their opinion, the act of Louisiana, then under consideration, went far beyond the province of a police regulation, and created an oppressive and odious monopoly, thus directly impairing the common rights of the citizens of the state, they dissented from the judgment of the court. * * * It was because the act of Louisiana transcended the limits of police regulation and asserted a power in the state to farm out the ordinary avocations of life, that dissent was made to the judgment of the court sustaining the validity of the act." The judge continues: "The amendment was not, as held in the opinion of the majority, primarily intended to confer citizenship upon the negro race. It had a much broader purpose; it was intended to justify legislation extending the protection of the national government over the common rights of *all* citizens of the United States, and thus obviate objections to the legislation adopted for the protection of the emancipated race. It was intended to make it possible for *all* persons, which necessarily included those of every race and color, to live in peace and security wherever the jurisdiction of the nation reached. It therefore recognized, if it did not create, a national citizenship, and made all persons citizens, except those who preferred to remain under the protection of a foreign government, and declared that their privileges and immunities, which embrace the fundamental rights belonging to citizens of all free governments, should not be abridged by any state. This national citizenship is primary and not secondary. It clothes its possessor, or would do so if not shorn of its efficiency by construction, with the right, when his privileges or immunities are invaded by partial or discriminating legislation, to appeal from his state to his nation, and gives him the assurance that, for his protection, he can invoke the whole power of the government." The views of Mr. Justice BRADLEY were to the same effect, and were concurred in by Mr Justice SWAYNE.

Supreme Court of Missouri—Abstract of Decisions at the March Term, 1874.

Interpretation—Charter of Missouri Loan Bank.—Missouri Loan Bank v. John Haw and Giles F. Filley. This case involves the interpretation of the charter of the Missouri Loan Bank, which provides that the bank shall have power "to loan money *upon personal security and the pledge of goods and chattels*," etc. The question comes up in this way: The defendant Haw borrowed $4,000 from the bank and executed his note for that amount to Filley, who, for the accommodation of Haw, endorsed it to the bank. The note having been dishonored, the bank brings this action jointly against the maker and endorser. The endorser, Filley, alleges that he is an endorser for the accommodation of Haw merely, and further alleges that the bank by the terms of its charter had no power to lend money upon *personal security* merely, and that the note is hence wholly void and he not liable. But the court hold otherwise. The provision of the bank's charter is interpreted as though it read "the association shall have power to lend money upon personal security, and shall also have power to lend money upon the pledge of goods and chattels." The case of North River Insurance Company v. Lawrence, 3 Wendell, 482, is examined and distinguished. The judgment below, that the plaintiff recover on the note, is here affirmed. VORIES, J., delivered the opinion. NAPTON, J., having been of counsel, did not sit. SHERWOOD, J., absent. The other judges concurred.

Action on Account Stated—Impeachment of Account.—Dominic Kronenberger v. Stephen Kinz. This was an action on an account stated. Upon the facts the court hold: 1. That there was no error in excluding the evidence offered to impeach the settlement, no foundation for the introduction of such evidence having been laid in the pleadings. 2. That the amount found in favor of the plaintiff by the settlement was due from the time of the settlement. But the defendant had a right to extend the time by the execution of his notes to the plaintiff in payment of the amount found due; and having agreed to do so, and then having failed to comply with his agreement, the right of action accrued immediately to the plaintiff. Judgment affirmed. ADAMS, J., delivered the opinion. The other judges concur.

Wife's Separate Estate Charged by Executing Note.—John Meyers v. Adaline H. Van Wagoner *et al.* In this case Mrs. Van Wagoner, a married woman, executed to the plaintiff her promissory note in lieu of a note which the plaintiff held against her son by a former marriage, who was insolvent. She at the same time took up and destroyed her son's note. This note, thus given by Mrs. Van Wagoner, was renewed by her by giving a second note, she thus procuring an extension of time. In these transactions nothing was said about charging her separate estate. The second note having been dishonored, suit was brought upon the same. Mrs. Van Wagoner pleaded want of consideration, and on the trial testified that in these transactions she had no intention of charging her separate estate. But the court hold: 1. That the note is supported by a good consideration. 2. That by executing her promissory note, the law implies that she intended to charge her separate estate; otherwise the doing of it would be entirely nugatory. The court cite Metropolitan Bank v. Taylor, 53 Mo. Judgment for the plaintiff is affirmed. ADAMS, J., delivered the opinion. SHERWOOD, J., absent. The other judges concurring.

Open and Notorious Adultery—The Missouri Statute Expounded.—State v. John D. Crowner and Nettie Gordon. The defendants were indicted under the Missouri statute for open and notorious adultery. The Missouri statute is as follows: "Every person who shall live in a state of open and notorious adultery, and every man or woman, one or both of whom are married and not to each other, who shall lewdly and lasciviously abide and cohabit with each other, and every person married or unmarried, who shall be guilty of open, gross lewdness or lascivious behavior, or of any open and notorious act of public indecency, grossly scandalous, shall, on conviction, be adjudged guilty of a misdemeanor," etc. The indictment pursued the statute. The proof was that the defendant, Crowner, a married man, and the defendant, Nettie Gordon, a single woman, took a private room in St. Louis, paid a month's rent in advance, and lived there for three days, apparently as man and wife, the man being away part of the time. The trial was before the court, a jury being waived. The defendants asked, among others, the following declaration of law: "That if the court, sitting as a jury, shall find from the evidence that the defendants were not living together in a state of open and notorious adultery, but were simply, at the time charged in the information, stopping together in the same room occasionally, and were only guilty of occasional acts of illicit intercourse, then the court should find the defendants not guilty." This declaration the court below refused, and this refusal is here assigned as error.

J. G. Lodge, for the appellants, cited and argued from the cases quoted by the court, *infra*. *J. C. Normile*, prosecuting attorney, *contra*.

The court hold that the refusal of the declaration of law above set forth was error, and also that under the facts proved the conviction cannot be sustained. The court say: "The statute contemplates three different classes of offences. The first, and the one for which the defendants in this case are prosecuted, applies only to persons who live in a state of open and notorious adultery, and the offence under that clause of the statute can only be committed by a married person. The second class of offences can only be committed by a man or woman, one or both of whom are married and not to each other, and who shall lewdly and laciviously abide and cohabit with each other, etc. The third class of offences provided for may be committed by any person, either married or unmarried. The defendants in this case are charged with living in a state of open and notorious adultery. The offence consists of an open and notorious living or cohabitating together. Occasional illicit intercourse will not constitute the offence. The statute was intended to provide against persons who, in defiance of morality and the good or well being of society, should openly live together. They must reside together publicly in the face of society, as if the conjugal relation existed between them. Their illicit intercourse must be habitual. (Wright v. State, 5 Blackf. 358; Seares v. People, 13 Ill. 597; State v. Gartrell, 14 Ind. 380; Dameron v. State, 8 Mo. 494.) I would not be understood to say that the cohabiting and abiding together must be for any great length of time. Perhaps a short time would do But the parties must live together in an open and notorious manner, to the evil example of society. Simply having occasional illicit intercourse, without a public or notorious living together, as the evidence in this case tends to prove, is certainly not sufficient."

Judgment reversed; VORIES, J., delivering the opinion. SHERWOOD, J., absent. The other judges concurring.

Recent Reports.

MISSOURI REPORTS, VOL. 53. Reports of Cases Argued and Adjudged in the Supreme Court of Missouri. By TRUMAN A. POST, Reporter. Vol. 53. Embracing part of the June term, 1873, at Jefferson City, and part of the October term, 1873, at St. Louis. St. Louis: W. J. Gilbert. 1874 Price $4.

Hons. DAVID WAGNER, WASH. ADAMS, H. M. VORIES, T. A. SHERWOOD, E. B. EWING, and W. B. NAPTON, Judges.

In size and appearance this volume does not differ from its predecessors. The editorial and mechanical work are very fairly done—certainly as well done as the meagre compensation allowed by the state will admit of. We note the following cases of interest:

Bills and Notes—Conditional Acceptance.—The acceptance of an order for money stated therein to be against sums due on a pending contract, is a conditional acceptance, and a subsequent breach of the contract by the drawer may be a good defence to a suit on such acceptance. Crowell v. Plant, 145.

———. **Liability of Surety who Signs with Particular Agreement as to Co-surety.**—Where one becomes surety on a non-negotiable promissory note on the express condition that another shall be procured as co-surety, and the latter fails to sign, the surety will not be liable, although the note is in the hands of a holder having no notice of the agreement. As to the surety, while the condition remains unperformed, the instrument is merely an escrow and there is no delivery. Ayres v. Milroy, 516.

———. **Agreement to Obtain Co-surety—Maker Agent of Surety.**—Although a surety upon a note is induced to sign upon the promise of the maker that a co-surety shall be joined, yet if nothing on the face of the paper imparts notice to the holder, or puts him on enquiry as to such agreement, no fault attaches to the latter, and the surety must run the risk of the fraud of his own agent. Per NAPTON, J.; SHERWOOD, J., concurring. *Id.*

———. **Notice to Endorser—Due Diligence, what is.**—A notary public not knowing the residence of an endorser, on the day of protest made enquiry at the bank in St. Louis, where the note was payable, and at the place of business of another endorser, and examined the city directory to ascertain the residence, but without success. He thereupon placed the notice in the city post-office. The evidence showed that other endorsers could have given the desired information, and that one of them lived in East St. Louis, immediately across the river. *Held*, that it was the duty of the notary to enquire at least of all the parties to the note, if accessible, and that he might have prosecuted his enquiries for that purpose for several days; that there was no search made such as the law requires, and that putting the notice in the post-office, under the circumstances, amounted to nothing. Gilchrist v. Donnell, 591.

———. ———. **Residence—Presumption as to Service of Notice Must be Made, How.**—There is no presumption that an endorser resides in the town or city where the bill or note is made payable. If such be the fact, notice cannot be served by depositing it in the post-office, but the service must be personal, or by leaving it at the usual place of business of the endorser, or with his family at his domicile. Id.

Criminal Law—Association with Thieves.—An individual may associate with thieves, &c., without being guilty of any offence, for it is not the business of the legislature to keep guard over individual morality; but if such person so associate with a design to aid, abet or promote, or in any way assist the parties charged with, or suspected of, being thieves, prohibitory legislation may be applied, not to correct the evil consequences which such association may bring on the individual, but to protect society from actual or anticipated breaches of law. City of St. Louis v. Fitz, 582.

———. ———. **St. Louis Ordinance.**—The ordinance of the city of St. Louis (City Ord. chap. 20, art. 4, § 1), prohibiting the "knowingly associating with persons having the reputation of being thieves and prostitutes," is void, as invading the right of personal liberty. Per SHERWOOD, J., concurring. Id.

Evidence—Surgical Examination at the Trial.—The proposal of counsel in a damage suit, to have surgeons called in during the progress of the trial to examine plaintiff as to the extent of his injuries, is unknown to the law, and the court has no power to enforce such an order. Loyd v. H. & St. Jo. R. R. Co., 509.

Female Suffrage—Fourteenth Amendment.—There is no conflict between the constitution of the state and the registration laws restricting the right of voting to male citizens, and the fourteenth amendment to the constitution of the United States. Minor v. Happersett, 58.

Husband and Wife—Married Women as Witnesses—Missouri Statute.—Section 5 of the statute concerning witnesses (W. S 1373), holding married women incompetent to testify as to admissions and conversations of their husbands, was intended to apply to all cases, whether the husband was a party or not. Moore v. Wingate, 398.

Municipal Corporations—Special Taxes—Streets—Re-paving—Assessment of Benefits.—The power to grade and improve streets is a legislative power, and is a continuing one unless there is some special restraint

imposed in the charter of the corporation. It may be exercised from time to time as the wants of the municipal corporation may require, and of the necessity or expediency of its exercise the governing body of the corporation, and not the courts, is the jndge; and it follows that the power to compel the property-owners to pave generally, extends to compelling them to re-pave when required by the municipal authorities. If the first paving of a street is a special benefit to the front proprietor, justifying the imposition on him of a portion of the expense, so the removal of an insufficient pavement and the making of a new and sufficient one in its stead, is a matter of special benefit to the front proprietor, although it may be also of general utility. McCormack v. Patchin, 33.

———. **Improvement of Streets—Personal Judgments.**—Personal judgments against the owner of property in a city, on account of assessments for improvements of streets, &c., are null and void, and statutes authorizing such judgments are unconstitutional and void. City of St. Louis v. Clemens, 36 Mo. 467, and Id. 49 Mo. 552, overruled. City of St. Louis to Use, etc., v. Allen, 44.

———. **Judgments—Interest—Assessments for Street Improvements in City of St. Louis.**—The 15 per cent. interest in suits on assessments for street improvements should be allowed to the time of the verdict, but the judgment rendered thereon should bear six per cent. interest. Id.

———. **Liability for Losses by Fires.**—A grant by the legislature to a city of power to establish a fire department, confers a legislative or discretionary power, and does not render the city liable, if the power is exercised, for losses occurring through fires. Heller v. The Mayor, &c., of Sedalia, 159.

———. **Liability for Damages in Changing Grade of Streets.**—A city is not liable for the damages which may accrue to a property-owner merely from a change in the grade of the streets. Schattner v. The City of Kansas, 162.

———. ———. **Charter of Kansas City.**—The charter of the city of Kansas required the city council, as soon as practicable, to establish the grades of all the streets in the city, to prepare and exhibit to public view a map thereof, and thereafter only to change such grade after due public notice, etc. *Held*, that the city could not be held liable in damages at the suit of a private party for not obeying this provision of its charter. Id.

Railway Law—Refusal of Passenger to Surrender Ticket.—A passenger on a railroad train, who exhibits his ticket and demands a seat, need not surrender the ticket till the seat is furnished. Davis v. K. C., St. Joe and Council Bluffs R. R. Co., 317.

———. ———. **Damage, for Expelling Passenger—Failure to Furnish Seat, etc.**—A. buys a ticket from Winthrop to Bigelow on the K. C. and St. J. R. R. The cars are crowded. He refused to surrender his ticket till provided with a seat, and is ordered to leave the train when it shall arrive at Forest City. At this point he procures a seat, and subsequently tenders his fare from thence to Bigelow; but refuses to pay fare from Winthrop or to give up his ticket. Thereupon the conductor declines the amount offered, and not receiving his ticket, ejects him from the train.

In an action for damages by A., based on the original contract for transportation entered into at Winthrop, *held*, that under the contract, A. would not be entitled to ride from Forest City to Bigelow without surrendering his ticket, or tendering his full fare from Winthrop, and could not maintain his action; although the case might be different where plaintiff set up a new contract entered into at Forest City, and based his action thereon. Id.

Township Law of Missouri.—The act of March 24, 1873, was not designed to interrupt the continuity of the act of March 24, 1872, so as to avoid or annul proceedings under it. The act of 1873 must be construed as a continuation of the act of 1872, both relating to the organization of counties into municipal corporations, the former being designed to correct supposed defects in the latter. State v. County Court Vernon County, 128.

Negligence—Liability of Owners of Real Property.—The owner or occupant of real property is bound, so far as he may be able to do so by the exercise of ordinary care, to keep it in such condition that it will not, by any insufficiency for the purpose to which it is put, injure any passer-by; and he is bound also to use care and diligence to keep the premises in a safe condition for the access of persons who come thereon by his invitation, expressed or implied, for the transaction of business. But he is not bound to make the land or buildings thereon safe for any purpose which is unlawful or improper, or for which he could not reasonably anticipate that they would be used, or for which they obviously were never designed. A mere passive acquiescence on the part of the owner or occupant in the use of real property by others, does not involve him in any liability to them for its unfitness for such use. No duty is imposed upon the owner or occupant to keep his premises in a suitable condition for those who come there solely for their own convenience or pleasure, and who are not either expressly invited to enter, or induced to come upon them by the use for which the premises are appropriated and occupied, or by some preparatory adaptation of the place for use by customers or passengers, which might naturally and reasonably lead them to suppose that they might properly and safely enter. Straub v. Soderer, 38.

———. **Liability of Municipal Corporations for Damages caused by Defective Streets.**—Municipal corporations are bound to keep their streets in a reasonably safe condition. Failing to do so, they will be liable for all injuries resulting from their negligence. Bassett v. City of St. Joseph, 290.

———. ———. **Excavations Bordering on Streets.**—The liability of municipalities for damages caused by excavations is not restricted to cases where they actually extend into the street; if travel is thereby rendered dangerous, the authorities are equally bound to protect the public, whether they encroach on the highway or not. And the city is bound for damages resulting from neglect of proper precautions, even though the excavations were not made by its own agents, provided it had received due notice of the existing facts. Id.

———. ———. ———. In a suit against a city to recover damages for injuries caused by plaintiff's falling into an excavation adjacent to a market place, where it appeared that the authorities were notified of the dangerous condition of the thoroughfare, and took no steps to guard the public from accident, and the evidence showed that plaintiff, at the time of the casualty, was exercising ordinary care and prudence, plaintiff would be entitled to recover, although it further appeared that the primary cause contributing to the injury was the attempt of a mule to kick plaintiff, and that in avoiding this peril, he fell or jumped into the excavation. Id.

———. ———. ———. **Allegations—Aider by Verdict.**—In a suit against a municipal corporation for damages caused by plaintiff's falling into a cellar adjacent to a public street, where the petition charged that the excavation was unlawfully permitted to extend into the street, but the evidence showed that it was not unlawful *per se*, but became unlawful only in event that it was unlawfully permitted to remain without protection; *held*, that the petition was good after verdict, notwithstanding such variance. Id.

———. **Liability of Railway Companies for Damages from Fire Kindled by Locomotive.**—Where grass is set burning by fire escaping from a locomotive, and the owner sues the company, negligence on the part of defendant will be presumed from the escape of the fire, and it devolves upon it, in order to rebut this presumption, to show that proper and safe locomotives and engines were used, and were conducted by the servants of the company in a proper and safe way. In such case the damages claimed would not be held too remote or speculative, although the property consumed was separated from the track by a strip of ground forty or fifty yards wide where the plat was covered with dry grass and other combustible matter. Clemens v. H. and St. J. R. R. Co., 366.

———. **Liability of Railway Company for Damages Sustained by Passenger from Jumping from Train while in Motion.**—In a suit against a railroad company to recover damages for injuries sustained by plaintiff in getting from the platform of the car upon that of the depot, the evidence showed that the train stopped at the station only a minute; that during that time plaintiff's little child alighted; that plaintiff followed without delay, but after the train was in motion, and received her injuries in consequence of jumping from the train. *Held*, that the plaintiff would not be barred of recovery by the fact that she jumped from the train while in motion. Id.

Book Notices.

AMERICAN CORPORATION CASES. Edited by THOMAS F. WITHROW, late Reporter of the Supreme Court of Iowa. Vol. 2. Municipal Corporations. Chicago: E. B. Myers. 1874.

The design of this series is to embrace the decisions of the Supreme and Circuit Courts of the United States, and the courts of last resort in the several states since January 1, 1868, of questions peculiar to the law of corporations. The ability with which this volume, as well as the previous one relating to Private Corporations, is edited, admits of no question. Mr. Withrow commenced his professional life as the Reporter of the Supreme Court of Iowa, and as such justly acquired distinction. We do not know of any reporter who surpassed him in the excellence of his work. His power to make a condensed and clear statement of a case, and to put in fewest words the exact point in judgment, is a marked characteristic and results from the logical cast of his mind. The volume before us exemplifies the truth of these observations. Though only of the usual size, it contains about twice as many cases as are ordinarily embraced in a single

volume. Mr. Withrow has given much study to corporation law, and is actively engaged in an extensive practice having almost exclusive reference to it, and this adds to his other qualifications to edit acceptably a series of Reports of this character. While we give merited praise to the manner in which his plan is carried out, we nevertheless take the liberty to suggest the wisdom, if not the necessity, of a modification of the plan itself. If the learned editor would hereafter give only the leading cases, or those of general interest, *in full*, and the *rest*, if given at all, in a brief and condensed shape, the profession would get in the same space several times as much really valuable matter as at present. We are aware of the objections to which the plan suggested is open, but we think they would soon vanish if Mr. Withrow should demonstrate how possible it is to give the substance of a decision turning on the construction of a statute in the average compass of one or two pages. He would set out the statute, give the point decided, and in a few lines the arguments advanced by the judge in support of the conclusion. The volume before us contains cases for the year 1868, and is published in excellent style.

THE BENCH AND BAR REVIEW. January, 1874. Vol. 1. No. 1. Baltimore: ATKINSON SCHAUMBURG. Terms, $5 per annum.

We have before us the first number of this new legal quarterly, containing 200 pages. It is under the editorial management of Atkinson Schaumburg, Esq., of Baltimore. In its general character it is like the American Law Review and the Southern Law Review, a leading feature being essays upon legal topics, and an abstract of recent decisions of the higher courts in Great Britain, and of the federal and state courts of this country. This number contains a portrait of Caleb Cushing and an outline of his life and public and professional career, which we would have been glad to have seen filled up and rounded into more complete proportions. This number is, on the whole, a very excellent one, and the magazine will, in our opinion, prove a valuable addition to our periodical legal literature. We cannot but regard the name selected for it as unfortunate and liable to lead to confusion, since there has been in existence for some years a quarterly publication in Chicago by Callaghan & Co., entitled the "Bench and Bar." One or the other of our contemporaries should be re-christened. As the Chicago magazine has the older and therefore better right to its name, it would seem that the other journal would secure a distinctive name by hereafter calling itself the Baltimore Law Review.

Legal News and Notes.

—MR. MCCRARY'S bill to regulate inter-state commerce has passed the house of representatives, after a hard contest, by a majority of five. The main feature of this bill is that it provides for the appointment of a board of nine commissioners, who have power to regulate the maximum charges on inter-state railways for the carriage of freight and passengers. It is very doubtful whether it will pass the senate.

—THE Missouri legislature has passed what is known as the "female virtue bill." It makes seduction, under promise of marriage, a felony. We have not seen a text of this act. It is to be hoped it interposes some checks upon the conviction of persons accused of this crime on the testimony of the prosecutrix alone. The value of such evidence and the danger to which men, not more guilty than the injured female, may be subjected to in prosecutions for offences of this kind, are strongly illustrated by the case of State v. Burgdorf, 53 Mo. 65.

—THE house committee on the codification of the laws, treaties, etc., of the United States, of which Mr. Poland, of Vermont, is chairman, has about completed the arduous duty assigned to it of revising these laws. This committee has held regular evening sessions, and its chairman especially has always attended these and worked most assiduously. He has been greatly aided, too, by such members of the committee as Judge HOAR. The comprehensive code of United States laws will all be contained in a single volume of general laws, the treaties and other old matters having a separate volume devoted to them.

—IN Chicago a case has recently been tried involving the following point: A man who had over one thousand dollars stolen from him while travelling in one of the Pullman Company's sleeping cars, sued that company, and pressed his demand on the ground that they were liable both as carriers and hotel-keepers. The company contended that inasmuch as they did not receive pay for carrying passengers, but only for furnishing them with beds, they were not common carriers, and were not to be regarded in any sense as a "railway company." Furthermore, they insisted that they were not hotel-keepers, inasmuch as they supplied passengers with lodging only, and not with board. The plaintiff gained a verdict, though for only part of what he claimed, and the case has been taken to the supreme court.

—THE social evil law, just passed the Missouri legislature, prohibits the enforced examination and surveillance of prostitutes, but requires physicians to report to the board of health any venereally-diseased women they may prescribe for, whom they have reason to suspect to be prostitutes. As there is no penalty affixed to this requirement, no physician will make such reports, as it will injure his practice in such cases. It prohibits the police, under heavy penalties, from entering houses of prostitution without a warrant. It provides for the maintenance of the Social Evil Hospital and House of Industry, at the *public expense*, instead of at the expense of the class of women who are benefited by it, as heretofore, and provides that diseased prostitutes may voluntarily go there, and that those who are certified to be diseased, by physicans, may be confined there at the discretion of the board of health. In short, this law most effectually removes this class of persons from public surveillance. Every house of prostitution may be turned into a gambling den, and the police are powerless to break it up. In fact, the police being prohibited from entering such houses, unless armed with a warrant, cannot in many cases know where they are. Relieved from police surveillance and board of health "regulation," the whole business of restraining and suppressing prostitution is left to the voluntary action of citizens in swearing out warrants against this class of persons. Take it as a whole, this is a most remarkable law. Its penalties are all against the police officials; its immunities and benefits are almost entirely in favor of the prostitutes, while the expense involved by the iniquity which it shields, is borne by the general public.

—LOOK to your statute books. We mean this word of advice to our Missouri subscribers. The legislature just adjourned passed a large number of acts amending various chapters of the general statutes. Among the acts passed we note amendments to the general statutes by chapter and section as follows: Ch. 5, § 15; ch. 32, §§ 25, 26; ch. 36, § 7; ch. 63; ch. 63, § 39; ch. 70, § 1; ch. 80; ch. 143, § 51; ch. 169, § 6.

We also notice amendments to chapters of the general statutes which relate to the following subjects: Administrators; Corporations, religious and benevolent; Constables; County Treasurers; Deaf and Dumb; Dower; Dramshop Keepers; Drawing of Warrants; Education of Blind; Elections; Foreign Insurance Companies; Guardians and Curators; Inspection of Liquors; Members of General Assembly; Penitentiary; Revenue; Treasury Department; Trustees.

We also notice acts relating to the following subjects: The Practice of Pharmacy; authorizing Cities, Towns, etc., to organize for School Purposes; Fees of Witnesses and Jurors in St. Louis county; for the better protection of Rights of Minority Stockholders in Railroad Companies; to quiet Land Titles in Certain Cases; to provide for the Transcribing of Records from one county to another; Concerning Graduates of Law Department of Saint Louis University; to abolish Board of Guardians; to provide for the taking of Recognizances in certain cases; relating to Roads and Highways; relating to Juries in St. Louis county; concerning Bribery at Elections; prohibiting Railroads from charging over four cents per mile fare; Pay of Members of General Assembly; Appointment of Probate Clerks; relating to Conveyance of Personal Property; to Coroners' Inquests; Dramshop-keepers; Insurance Companies other than Life; Fees of Auction Sales under securities for Debt; to compel Clerks, Sheriffs, etc., to keep account of and pay over witnesses' fees; to prevent non-residents from grazing or herding cattle upon certain lands; for relief of Collectors of Revenue; to reorganize and provide for support of Public Schools; to prevent destruction of fish; to punish the carrying of concealed weapons; restricting the liabilities of counties, cities, towns, etc., in matters of contract; regulating the Practice of Medicine and Surgery; to destroy Gophers; to punish abuses of public trust; cost of assessing in counties having township organization prior to election in 1872; method of assessing tax on consolidated bridge companies; management of local Insurance Companies; False Receipts and Bills of Lading and Fraudulent transfers by Warehousemen; Ditches and Drains of Railroads; to regulate Traffic in Dead Animals; to regulate costs in Criminal Cases; Summoning jurors in Courts of Record; to promote the Science of Medicine and Surgery; amending Township Organization Law.